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11
12 **UNITED STATES DISTRICT COURT FOR THE**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 THEADORA KING, individually, and on
16 behalf of those similarly situated,

17 Plaintiff,

18 v.

19 SAFEWAY INC.,

20 Defendant.
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CASE NO:

CV-08-0999-EDL

**DEFENDANT SAFEWAY INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S CLASS
ACTION COMPLAINT**

1 Defendant Safeway Inc. ("Safeway" or "Defendant"), by its counsel, as its
2 Answer and Affirmative Defenses to the Class Action Complaint of Plaintiff Theadora King
3 ("Plaintiff"), states as follows:

4 1. This class action and representative action seeks relief on behalf of Plaintiff and
5 the members of the Class for injuries sustained by them as a result of Safeway, Inc.'s [sic]
6 ("Safeway") deceptive marketing of milk as organic when the milk is not, in fact, organic and
7 Safeway's increase in gross sales and sales price.

8 **ANSWER:**

9 Safeway denies that it deceptively marketed or sold any of its organic milk.
10 Safeway admits that Plaintiff purports to seek relief on behalf of a proposed class for Safeway's
11 allegedly "deceptive" marketing and sale of organic milk. Safeway further denies that class
12 certification is appropriate and expressly denies that any claims in this action are appropriate for
13 class treatment. Safeway denies that Plaintiff, or anyone else, is entitled to any relief
14 whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. By way
15 of further response, Safeway affirmatively states that it purchases its organic milk from dairies
16 whose products and operations are certified "USDA Organic" by one or more United States
17 Department of Agriculture ("USDA") accredited certifying agents, pursuant to the authority
18 vested in those agents by the USDA under the Organic Foods Production Act of 1990 ("OFPA")
19 and the National Organic Program ("NOP"). Except as expressly admitted, Safeway denies the
20 remaining allegations in Paragraph 1.

21 2. During the Class Period, Defendant, which is one of the largest food and drug
22 retailers in North America, violated its duty to inform customers that the "O"-label organic milk
23 is not organic. Defendant's nondisclosure of this material fact constitutes misrepresentation,
24 unfair, unlawful, fraudulent, and/or deceptive business practices in violation of California's
25 consumer protection laws. The materiality of this information is proven directly by federal and
26 state regulations which, at all relevant times, required Defendant to inform consumers that milk
27 that they were purchasing was not organic. Defendant flagrantly violated and, in some cases,
28 continue to violate these regulations.

ANSWER:

Safeway denies the allegations in Paragraph 2 and expressly denies committing any misrepresentations or any “unfair, unlawful, fraudulent and/or deceptive business practices” in California or anywhere else. Safeway further denies that class certification is appropriate and expressly denies that any claims in this action are appropriate for class treatment. By way of further response, Safeway affirmatively states that it purchases its organic milk from dairies whose products and operations are certified “USDA Organic” by one or more USDA-accredited certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA and the NOP.

3. As a result of Defendant’s misbranding, concealment and nondisclosure, customers are misled to purchase the organic milk and/or to pay a greater price than they would otherwise pay. Defendant has been unjustly enriched at the expense of these consumers.

ANSWER:

Safeway denies the allegations in Paragraph 3 and expressly denies that it engaged in any “misbranding, concealment and nondisclosure” of its organic milk.

4. This is a class action and a representative action brought by Plaintiff, who purchased organic milk from Defendant in the State of California during the Class Period.

ANSWER:

Safeway admits that Plaintiff purports to bring a class action and a representative action on behalf of those “who purchased organic milk from Defendant in the State of California” during a defined “Class Period.” Safeway denies that class certification is appropriate and expressly denies that any claims in this action are appropriate for class treatment. Safeway is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 regarding Plaintiff and her purchasing of organic milk and, on that basis, denies them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 4.

5. This Court has subject-matter jurisdiction over this representative action pursuant to Bus. & Prof. Code §§ 17204 and 17535. This Court has personal jurisdiction over the parties

1 because Plaintiff submits to the jurisdiction of the Court and Defendant Safeway, Inc.'s [sic]
2 principal place of business is located in Pleasanton, California, and a substantial portion of the
3 wrongdoing alleged in this Complaint took place in California, so as to render the exercise of
4 jurisdiction over it by California courts permissible under traditional notions of fair play and
5 substantial justice.

6 **ANSWER:**

7 Safeway admits that its principal place of business is in Pleasanton, California.
8 Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 5. By way
9 of further response, Safeway affirmatively states that it has removed this action to the United
10 States District Court for the Northern District of California pursuant to 28 U.S.C. § 1332.

11 8. [Sic] This litigation may not removed to federal court under 28 U.S.C. § 1332 as
12 amended by the Class Action Fairness Act of 2005, because the members of the Plaintiff Class
13 are citizens of the same state, California, as Defendant. *See* 28 U.S.C. § 1332(d)(2)(A). Further,
14 Plaintiffs assert no federal question and/or violations of federal law.

15 **ANSWER:**

16 Safeway denies the allegations in Paragraph 8.

17 9. Venue is proper in this Court pursuant to Bus. & Prof. Code §§ 17204 and 17535
18 and Civ. Code § 1780 (c) because Defendant conducts business in the County of Alameda and in
19 the State of California, including marketing, advertising, and sales directed to California
20 residents. Further, at all times mentioned in this Complaint, Defendant made misrepresentations
21 and material omissions to residents of the County of Alameda and the State of California.

22 **ANSWER:**

23 Safeway admits that it conducts business in the State of California, including the
24 County of Alameda. Safeway denies that it made any "misrepresentations and material
25 omissions" whatsoever to Plaintiff, the residents of the State of California and the County of
26 Alameda or anyone else. Except as expressly admitted, Safeway denies the remaining
27 allegations in Paragraph 9. By way of further response, Safeway affirmatively states that it has
28

1 removed this action to the United States District Court for the Northern District of California
2 pursuant to 28 U.S.C. § 1332.

3 10. The amount in controversy exceeds the jurisdictional minimum of this Court.

4 **ANSWER:**

5 Safeway admits that the amount in controversy exceeds \$5,000,000. Except as
6 expressly admitted, Safeway denies the remaining allegations in Paragraph 10. By way of
7 further response, Safeway affirmatively states that it has removed this action to the United States
8 District Court for the Northern District of California pursuant to 28 U.S.C. § 1332.

9 11. Plaintiff Theadora King is a resident of Alameda County, California and a citizen
10 of the State of California. Plaintiff purchased the store-brand organic milk from Defendant
11 Safeway at its stores in California on numerous occasions throughout the class period. This milk
12 was produced by Aurora Dairy Corp. and branded as a private label brand by Safeway. Plaintiff
13 utilized the organic milk produced and sold by Defendant for her own and her family's own
14 consumption. Plaintiff decided to purchase "organic" milk, and indeed paid a premium price for
15 that "organic" milk, because she believed that it contained fewer additives and was healthier for
16 her consumption than non-organic milk.

17 **ANSWER:**

18 Safeway admits that some, but not all, of the organic milk that it sells is supplied
19 by Aurora Dairy Corporation, d/b/a Aurora Organic Dairy ("Aurora"). Safeway is without
20 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
21 contained in Paragraph 11 regarding Plaintiff, her purchasing decisions and her use of organic
22 milk and, on that basis, denies them. Except as expressly admitted, Safeway denies the
23 remaining allegations in Paragraph 11.

24 12. Safeway is a Delaware corporation with its principal place of business in
25 Pleasanton, California. Safeway is one of the largest food and drug retailers in North America.
26 As of September 8, 2007, the company operated 520 stores in the State of California, which is
27 more than one-third of its total stores nationwide.
28

1 **ANSWER:**

2 Safeway admits the allegations in the first and second sentences of Paragraph 12.
 3 Safeway further admits that, as of September 8, 2007, it operated 520 stores in the State of
 4 California and 1,518 stores in the United States. Except as expressly admitted, Safeway denies
 5 the remaining allegations in Paragraph 12.

6 13. Safeway sold its "organic" milk to Plaintiff and the Class under its store "O"
 7 brand. The "organic" milk was contained in cartons that specifically represented that the milk
 8 was certified organic milk, despite the fact that it was not organic. Aurora labels its purportedly
 9 organic milk with an organic certified label. This label is supposed to assure consumers that
 10 Aurora's milk complies with the Organic Foods Production Act of 1990 (7 U.S.C. §§ 6501, *et*
 11 *seq.*) and its implementing regulations (7 C.F.R. Part 205). Plaintiff and the Class Members they
 12 represent pay premium prices for Safeway's "organic" milk.

13 **ANSWER:**

14 The OFPA (7 U.S.C. 6501, *et seq.*) and the NOP regulations (7 C.F.R. Part 205, *et*
 15 *seq.*) speak for themselves, and to the extent that the allegations in Paragraph 13 vary therewith,
 16 Safeway denies those allegations. The "cartons" referred to in Paragraph 13 further speak for
 17 themselves, and to the extent that the allegations in Paragraph 13 vary therewith, Safeway denies
 18 those allegations. Safeway admits that some, but not all, of the organic milk it sells is supplied
 19 by Aurora. Safeway further admits that Aurora represents that its milk is "USDA Organic"
 20 because it is, and has been at all times relevant hereto, certified organic by two certifying agents
 21 -- the Colorado Department of Agriculture ("CDA") and Quality Assurance International
 22 ("QAI") -- acting pursuant to the authority vested in them by the USDA under the OFPA and the
 23 NOP. Safeway is without knowledge or information sufficient to form a belief as to the truth or
 24 falsity of the allegations contained in Paragraph 13 regarding Plaintiff and, on that basis, denies
 25 them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 13
 26 and expressly denies that class treatment is appropriate.

27 14. Safeway is and has been selling milk or milk products that it represents to be
 28 "organic," when, in fact, the milk is not organic throughout the time period of December 5, 2003

1 through October 15, 2007 ("class period" or "relevant time period"). Safeway sells this milk to
2 consumers directly using its own brand name "O."

3 **ANSWER:**

4 Safeway denies that it has sold "milk or milk products that it represents to be
5 'organic' when, in fact, the milk is not organic." Safeway admits that it sells its organic milk
6 with the label "USDA Organic" because it purchases its organic milk from dairies whose
7 products and operations are certified "USDA Organic" by one or more USDA-accredited
8 certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA
9 and the NOP. Except as expressly admitted, Safeway denies the remaining allegations in
10 Paragraph 14 and expressly denies that class treatment is appropriate.

11 15. The market for organic milk has boomed in recent years. According to the United
12 States Department of Agriculture ("USDA"), total milk or milk products production in the
13 United States in 2004 was 170 billion pounds. Fluid milk or milk products sales since 1975 have
14 been steady at approximately \$11 billion per year. Currently, organic fluid milk or milk products
15 sales represent about 18% of overall sales. In 2005, total organic dairy sales were approximately
16 \$2 billion. The organic dairy sector is annually growing at an approximate rate of 16%.

17 **ANSWER:**

18 Safeway is without knowledge or information sufficient to form a belief as to the
19 truth or falsity of the allegations contained in Paragraph 15 and, on that basis, denies them.
20 Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 15.

21 16. Consumers rely on manufacturers and sellers of milk or milk products to
22 determine what milk is in fact organic. As Aurora Dairy, from which Safeway obtained the milk
23 labeled under its "O" brand, expressly recognizes, "Organic certification is the public's
24 assurance that products have been grown and handled according to strict procedures without
25 persistent toxic chemical inputs." [http://www.auroraorganic.com/aodweb/site/](http://www.auroraorganic.com/aodweb/site/itemcontent.aspx?categoryid=6)
26 [itemcontent.aspx?categoryid=6](http://www.auroraorganic.com/aodweb/site/itemcontent.aspx?categoryid=6).

1 ANSWER:

2 The material from Aurora's website speaks for itself, and to the extent that the
 3 allegations in Paragraph 16 vary therewith, Safeway denies those allegations. Safeway admits
 4 that some, but not all, of the organic milk it sells is supplied by Aurora. Safeway is without
 5 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
 6 contained in Paragraph 16 regarding upon what Plaintiff or others "rely" and, on that basis,
 7 denies them. Except as expressly admitted, Safeway denies the remaining allegations in
 8 Paragraph 16.

9 17. The USDA has set forth four requirements that must be satisfied for milk to be
 10 labeled as "USDA Organic": (a) the milk must not come from cows that have been treated with
 11 Bovine Growth Hormone; (b) the milk must not come from cows that have been treated with
 12 antibiotics; (c) the milk producing cows must only eat feed that has been grown without
 13 pesticides; and (d) the milk must come from cows that have some "access to pasture."

14 ANSWER:

15 The requirements for organic production detailed in the OFPA (7 U.S.C. 6501, et
 16 seq.) and the NOP regulations (7 C.F.R. Part 205, et seq.) speak for themselves, and to the extent
 17 that the allegations in Paragraph 17 vary therewith, Safeway denies those allegations. Except as
 18 expressly admitted, Safeway denies the remaining allegations in Paragraph 17.

19 18. In order to sell or label an agricultural product as organically produced, the
 20 product must be produced and handled in compliance with the Organic Foods Production Act of
 21 1990 ("OFPA"), *See* 7 U.S.C. 6505(a)(1)(A), and the USDA adopted regulations, *see* 7 C.F.R.
 22 Part 205, *et seq.*

23 ANSWER:

24 The requirements for organic production detailed in the OFPA (7 U.S.C. 6501, et
 25 seq.) and the NOP regulations (7 C.F.R. Part 205, et seq.) speak for themselves, and to the extent
 26 that the allegations in Paragraph 18 vary therewith, Safeway denies those allegations. Except as
 27 expressly admitted, Safeway denies the remaining allegations in Paragraph 18.

28 19. By marketing, selling, or otherwise representing that its milk was "organic,"

1 Safeway represented that the milk abides by these laws and regulations and that the milk is
2 “organic.”

3 **ANSWER:**

4 Safeway admits that it sells its organic milk with the label “USDA Organic”
5 because it purchases its organic milk from dairies whose products and operations are certified
6 “USDA Organic” by one or more USDA-accredited certifying agents, pursuant to the authority
7 vested in those agents by the USDA under the OFPA and the NOP. Except as expressly
8 admitted, Safeway denies the remaining allegations in Paragraph 19.

9 20. Specifically, Safeway included labels on its “O” brand milk that stated, in whole
10 or in part, as follows:

11 **Description :**

Organic Fat Free Milk

12 **Ingredients:**

Organic Grade A Fat Free Milk, Vitamin A Palmitate, Vitamin D3

13 **Product Attributes:**

Organic

14 Kosher

FatFree

15 **Product Details:**

16 Ultra-Pasteurized Vitamins A & D added. USDA Organic. Grade
17 A: Ultra-Pasteurized: Homogenized. Organic from the Source.
18 There’s a lot that goes into a good glass of milk. It starts with the
19 land. Our daily Pastures are environmentally friendly, maintained
20 with the use of recognized organic horticultural practices. The
21 dairy cows that produce O Organics Milk enjoy a healthy mix of
22 fresh air, plenty of exercise, clean drinking water and a
23 wholesome, 100% certified organic diet - and they are not given
24 growth hormones or treated with antibiotics. All of these practices
25 support sustainable farming, which is good for the environment.
26 good for the cows and good for the milk. That’s why our O
27 Organics Milk tastes like milk should, fresh and pure. To be
28 certified organic, dairy cows must be managed under organic
livestock practices at least one year before milking. Their feed
must be grown on land that has been under organic cultivation
practices for a minimum of three years. Certified Organic

25 **ANSWER:**

26 The labels referred to in Paragraph 20 speak for themselves, and to the extent that the
27 allegations in Paragraph 20 vary therewith, Safeway denies those allegations. Except as
28 expressly admitted, Safeway denies the remaining allegations in Paragraph 20.

21. On the carton of Safeway's **O** Organics Milk is the following statement:

ORGANICS

Organic from the Source

There's a lot that goes into a good glass of milk. It starts with the land. Our dairy pastures are environmentally friendly, maintained with the use of recognized organic horticultural practices. The dairy cows that produce **O** Organics Milk enjoy a healthy mix of fresh air, plenty of exercise, clean drinking water and a wholesome, 100% certified organic diet – and they are not given growth hormones or treated with antibiotics.

All of these practices support sustainable farming, which is good for the environment, good for the cows and good for the milk. That's why our **O** Organics Milk tastes like milk should – fresh and pure.

The carton also states:

ORGANICS

organic

Fat Free Milk

Vitamins A & D Added
Grade A • Pasteurized • Homogenized

“To be certified organic, dairy cows, must be managed under organic livestock practices at least on eyear [sic] before milking. Their feed must be grown on land that has been under organic cultivation practices for a minimum of three years.”

ANSWER:

The carton referred to in Paragraph 21 speaks for itself, and to the extent that the allegations in Paragraph 21 vary therewith, Safeway denies those allegations. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 21.

22. However, Safeway's milk was not organic according to Federal law. In fact, Safeway's “organic” milk was produced in large scale factory farms and otherwise failed to comport with Federal law and thus should not have been certified organic.

ANSWER:

Safeway denies its milk was not organic according to “Federal law.” “Federal law” speaks for itself, and to the extent that the allegations in Paragraph 22 vary therewith,

1 Safeway denies those allegations. Except as expressly admitted, Safeway denies the remaining
2 allegations in Paragraph 22.

3 23. By marketing, selling, or otherwise representing that its milk was "organic,"
4 Costco represented that the milk abides by the laws and regulations requiring certain conditions
5 be met before the milk is labeled "organic."

6 **ANSWER:**

7 Safeway is without knowledge or information sufficient to form a belief as to the
8 truth or falsity of the allegations contained in Paragraph 23 regarding Costco and, on that basis,
9 denies them. Except as expressly admitted, Safeway denies the remaining allegations in
10 Paragraph 23.

11 24. Aurora was formed by the former owners of Horizon, who sold Horizon to Dean
12 Foods. The sale left Aurora with thousands of milk cows. Aurora then started its Colorado
13 operation which produces 10 million gallons of milk a year. It is in essence a factory-farm
14 model, there is no opportunity for cows to graze, as depicted below:

15 [PHOTO]

16 **ANSWER:**

17 Safeway is without knowledge or information sufficient to form a belief as to the
18 truth or falsity of the allegations concerning the formation of Aurora or of the so-called
19 "Colorado operation" contained in Paragraph 24 and, on that basis, denies them. By way of
20 further response, Safeway affirmatively states that Aurora is, and has been at all times relevant
21 hereto, certified organic by two certifying agents -- CDA and QAI -- acting pursuant to the
22 authority vested in them by the USDA under the OFPA and the NOP. Except as expressly
23 admitted, Safeway denies the remaining allegations in Paragraph 24.

24 25. Aurora's primary business is selling milk for use in the private-label milk market
25 for Safeway, Costco, Wild Oats and others.

26 **ANSWER:**

27 Safeway is without knowledge or information sufficient to form a belief as to the
28 truth or falsity of the allegations concerning Aurora's "primary business" in Paragraph 25 and,

1 on that basis, denies them. Safeway admits that some, but not all, of the organic milk that it sells
2 is supplied by Aurora. Except as expressly admitted, Safeway denies the remaining allegations
3 in Paragraph 25.

4 26. However, Aurora's milk was not organic according to Federal law. In fact,
5 Aurora's "organic" milk was produced in large scale factory farms and otherwise failed to
6 comport with Federal law.

7 **ANSWER:**

8 Safeway denies the allegations in Paragraph 26. By way of further response,
9 Safeway affirmatively states that Aurora is, and has been at all times relevant hereto, certified
10 organic by two certifying agents -- CDA and QAI -- acting pursuant to the authority vested in
11 them by the USDA under the OFPA and the NOP.

12 27. On March 7, 2007, the USDA identified the following "violations by Aurora
13 Organic Dairy," from which Safeway obtained the milk Safeway sold under its own labels, of
14 federal law:

15 a. From 2003 through 2006, for dairy animals at its Platteville, Colorado
16 facility, Aurora failed to provide a total feed ration that included pasture, failed to establish and
17 maintain pasture conditions appropriate for minimizing the occurrence and spread of diseases
18 and parasites, and failed to establish and maintain access to pasture, in willful violation of 7
19 C.F.R. §§ 205.237(a), 205.238(a)(3), and 205.239(a)(2);

20 b. During the spring and early summer of 2006, Aurora entered conventional
21 dairy animals into organic milk or milk products production at its Dublin, Texas facility before
22 those animals completed the required one-year period of continuous organic management, in
23 willful violation of 7 C.F.R. § 205.236(a)(2);

24 c. From 2003 through 2006, Aurora purchased for its Platteville facility,
25 from Promiseland Livestock in Falcon, Missouri, dairy animals that had been converted from
26 conventional to organic milk or milk products production, and thus had not been under
27 continuous organic management from at least the last third of gestation, in willful violation of 7
28 C.F.R. § 205.236(a)(2)(iii);

1 d. From on or about July 10, 2004 through on or about September 28, 2005,
2 Aurora moved organic dairy animals from its certified Platteville facility to Wells Ranch in Gill,
3 Colorado, a non-organic (non-certified) livestock operation for management, and thereafter
4 returned them to the Platteville facility for organic dairy production, in willful violation of 7
5 C.F.R. § 205.236(b)(1);

6 e. From February 2005 through March 2006, Aurora moved organic calves
7 from its certified Platteville facility to non-organic (non-certified) livestock operations for
8 management, and eventually returned them to the Platteville facility for organic dairy production,
9 in willful violation of 7 C.F.R. §§ 205.236(a)(2)(iii) and 205.236(b)(1);

10 f. From 2003 through 2006, Aurora used non-organic agricultural products,
11 such as wheat straw and corn stalks, as bedding for organic dairy animals at its Platteville
12 facility, in willful violation of 7 C.F.R. § 205.239(a)(3);

13 g. From on or about July 27, 2004 through on or about September 30, 2005,
14 Aurora routinely caused organic dairy animals from Promiseland Livestock, a certified organic
15 dairy, to be delivered to Wells Ranch, a non-organic livestock operation, for livestock
16 management, before having them delivered to Aurora's Platteville facility for organic dairy
17 production, in willful violation of 7 C.F.R. § 205.236(b)(1);

18 h. From December 5, 2003 through at least September 7, 2007, Aurora sold,
19 labeled and represented its milk or milk products as being organically produced when such milk
20 or milk products were not produced and handled in accordance with the National Organic
21 Program regulations, in willful violation of 7 C.F.R. §§ 205.102, 205.200 and 205.400(a);

22 i. From on or about October 29, 2003 through on or about March 9, 2006,
23 Aurora failed to notify its certifying agent immediately concerning changes to the operation of its
24 Platteville facility regarding the termination an utilization of off-site facilities, such as Wells
25 Ranch, contracted by Aurora to provide pasture and/or livestock management services, in willful
26 violation of 7 C.F.R. § 205.400(f)(2);

27 j. Aurora failed to include a summary statement, supported by
28 documentation, in the December 29, 2004 and December 28, 2005 Organic System Plans for its

1 Platteville facility that detailed changes to the previous year's Organic System Plan regarding the
 2 termination and utilization of off-site facilities, such as Wells Ranch, contracted by Aurora to
 3 provide pasture and/or livestock management services, in willful violation of 7 C.F.R.

4 § 205.406(a)(1)(i);

5 k. From 2004 through 2006, Aurora failed to maintain adequate records that
 6 disclosed all activities and transaction in sufficient detail as to be readily understood and audited
 7 to demonstrate compliance with the OFPA and the National Organic Program regulations
 8 concerning pasture arrangements with operations identified by Aurora in its annual Organic
 9 System Plan for its Platteville facility, in willful violation of 7 C.F.R. § 205.103(b);

10 l. In the October 29, 2003 and December 29, 2004 Organic System Plans for
 11 its Platteville facility, Aurora failed to include a full description of the practices and procedures
 12 to be performed by Wells Ranch, in willful violation of 7 C.F.R. § 205.201(a)(1);

13 m. In the December 28, 2005 Organic System Plan for its Platteville facility,
 14 Aurora failed to include a full description of the practices and procedures to be performed by
 15 Matsude Farms, Salazar, Cockroft Dairy Farm, and Ray-Glo Dairy, as at its Woodward facility,
 16 in willful violation of 7 C.F.R. § 205.201(a)(1); and

17 n. In the October 29, 2003, December 29, 2004, and December 28, 2005
 18 Organic System Plans for its Platteville facility, Aurora failed to include a full description of the
 19 monitoring practices and procedures to be performed and maintained to verify that its Organic
 20 System Plans were effectively implemented with respect to off-site operations contracted by
 21 Aurora to provide pasture and/or livestock management services, in willful violation of 7 C.F.R.
 22 § 205.201(a)(3).

23 **ANSWER:**

24 Safeway does not answer for Aurora, which has not been named in this action.
 25 Safeway denies the allegations in Paragraph 27.

26 28. On August 23, 2007, Aurora entered into a Consent Agreement with the USDA.
 27 This Consent Agreement contained a stipulation for probation. The USDA found that Aurora
 28 had not been in compliance with the federal organic food regulations, and placed it on a one year

1 probationary period. The Consent Agreement provided that Aurora was required to remove
 2 organic dairy animals “currently present at Platteville that transitioned under the ‘80/20’ rule”
 3 from the plant, and instructed that such animals could only be utilized as conventional animals,
 4 not certified organic animals. Finally, the Consent Agreement also requires Aurora to address all
 5 issues that were raised in the Notice of Proposed Revocation in order for its organic certification
 6 not to be revoked.

7 **ANSWER:**

8 Safeway does not answer for Aurora, which has not been named in this action.
 9 The Consent Agreement speaks for itself, and to the extent that the allegations in Paragraph 28
 10 vary therewith, Safeway denies those allegations. Except as expressly admitted, Safeway denies
 11 the remaining allegations in Paragraph 28.

12 29. Safeway violated, and continues to violate federal and state law (including the
 13 applicable regulations by selling its milk as “organic.” By mislabeling the milk, Safeway has
 14 misled, and continues to mislead Plaintiff and the Class Members into paying a higher price for
 15 milk that cannot be sold as “organic.”

16 **ANSWER:**

17 Safeway denies the allegations in Paragraph 29 and expressly denies that class
 18 treatment is appropriate.

19 30. The milk that Safeway sold was not organic, despite Defendant’s
 20 misrepresentations that the milk was, in fact, organic; in that Aurora and thus Safeway had failed
 21 to comply with the requirements of the OFPA. *See* 7 C.F.R. §§ 205.102, *et seq.*, in at least the
 22 following ways:

23 a. Safeway represented its milk or milk products as “organic” when, in fact,
 24 they were not, in willful violation of 7 C.F.R. § 205.102;

25 b. Aurora failed to maintain records concerning the production and handling
 26 of milk or milk products intended to be sold, labeled, or represented as “organic” in a manner
 27 which fully disclosed all activities and transactions of the certified operation in sufficient detail
 28 as to be readily understood and audited, in willful violation of 7 C.F.R. § 205.103(b);

1 c. Aurora failed to provide its dairy cows with access to land used for
2 livestock grazing that it managed to provide feed value as required by 7 C.F.R. §205.200;

3 d. Aurora, intending to sell, label or represent milk or milk products as
4 “organic,” failed to comply with the applicable provisions of 7 C.F.R. § 205.200;

5 e. Aurora failed to maintain an accurate organic production or handling
6 system that includes a description of practices and procedures to be performed and maintained,
7 including the frequency with which they will be performed, in willful violation of 7 C.F.R.
8 §205.201(a)(1);

9 f. Aurora failed to maintain an accurate organic production or handling
10 system that included a description of the monitoring practices and procedures to be performed
11 and maintained, including the frequency with which they will be performed, to verify that the
12 plan is effectively implemented, in willful violation of 7 C.F.R. § 205.201(a)(3);

13 g. Aurora, after an entire, distinct herd had been converted to organic
14 production, failed to maintain all cows under organic management from the last third of
15 gestation, in willful violation of 7 C.F.R. §205.236(a)(2)(iii);

16 h. Aurora removed its dairy cows from an organic operation and
17 subsequently managed those cows on a non-organic (non-certified) operation before being sold,
18 labeled, or represented as organically produced, in willful violation of 7 C.F.R. § 206.236(b)(1);

19 i. Aurora failed to provide its dairy cows with a total feed ration composed of
20 agricultural products, including pasture and forage, that are organically produced and, where
21 applicable, organically handled, in willful violation of 7 C.F.R. 205.238(a)(3);

22 j. Aurora failed to establish and maintain living conditions for its dairy cows
23 which accommodate their health and natural behavior, in willful violation of 7 C.F.R.
24 § 205.239(a);

25 k. Aurora failed to establish appropriate housing, pasture conditions, and
26 sanitation practices for its dairy cows to minimize the occurrence and spread of diseases and
27 parasites, in willful violation of 7 C.F.R. § 205.238(a)(3);

28 l. Aurora failed to provide its dairy cows with suitable access to the

1 outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight in willful violation of 7
 2 C.F.R. § 205.239(a)(1);

3 m. Aurora failed to provide its dairy cows with access to pasture in willful
 4 violation of 7 C.F.R. § 205.239(a)(2);

5 n. Aurora failed to provide its dairy cows with appropriate clean, dry
 6 bedding, which complies with the feed requirements of § 205.237, in willful violation of 7
 7 C.F.R. § 205.239(a)(3);

8 o. Aurora failed to provide shelter designed to allow for its dairy cows'
 9 natural maintenance, comfort behaviors, and the opportunity to exercise, as required by federal
 10 regulation;

11 p. Aurora failed to comply with the Organic Food Production Act of 1990
 12 and applicable organic production and handling regulations of 7 C.F.R. § 205.400(a);

13 q. Aurora failed to immediately notify its certifying agent concerning the
 14 application of a prohibited substance to its dairy cows, in willful violation of 7 C.F.R.
 15 § 205.400(f)(2); and

16 r. Aurora failed to submit to its certifying agent an updated organic
 17 production or handling system plan that included a summary statement, supported by
 18 documentation, detailing deviations from, changes to, modifications to, or other amendments
 19 made to the previous year's organic system plan during the previous year in willful violation of 7
 20 C.F.R. § 205.406(a)(1)(i).

21 **ANSWER:**

22 Safeway does not answer for Aurora, which has not been named in this action.
 23 Safeway denies the allegations in Paragraph 30.

24 31. Defendant Safeway failed to conduct its own inspections and oversight to
 25 determine whether Aurora was complying with the laws and/or ignored Aurora's flagrant
 26 violations. Its representations about cows having a "healthy mix of fresh air, plenty of exercise,"
 27 were blatantly false. Thus, despite the violations of federal law and regulations, Safeway
 28 marketed and sold the milk or milk products under the "O" brand representing that the milk was

1 organic, when it was not. Defendant's conduct deceived Plaintiff and the Class Members into
2 believing that they were purchasing organic milk when they were not.

3 **ANSWER:**

4 Safeway denies having made any "blatantly false" representations whatsoever
5 concerning its organic milk. By way of further response, Safeway admits that it markets and
6 sells its organic milk with the label "USDA Organic" because it purchases its organic milk from
7 dairies whose products and operations are certified "USDA Organic" by one or more USDA-
8 accredited certifying agents, pursuant to the authority vested in those agents by the USDA under
9 the OFPA and the NOP. By way of further response, Safeway affirmatively states that some, but
10 not all, of the organic milk it sells is supplied by Aurora. Except as expressly admitted, Safeway
11 denies the remaining allegations in Paragraph 31 and expressly denies that class treatment is
12 appropriate.

13 32. Thus, Safeway directly misrepresented to Plaintiff and the Class Members that the
14 "organic" milk it sold under its own label was certified organic, when it was not. Again, Plaintiff
15 and the Class Members would not have purchased Safeway's milk, and paid the premium for
16 Safeway's milk had they known that Safeway's milk was, in fact non-organic.

17 **ANSWER:**

18 Safeway denies making any misrepresentations whatsoever regarding the
19 certification of its organic milk to Plaintiff or anyone else. Safeway is without knowledge or
20 information sufficient to form a belief as to the truth or falsity of the allegations contained in the
21 second sentence of Paragraph 32 and, on that basis, denies them. By way of further response,
22 Safeway affirmatively states that it sells its organic milk with the label "USDA Organic" because
23 it purchases its organic milk from dairies whose products and operations are certified "USDA
24 Organic" by one or more USDA-accredited certifying agents, pursuant to the authority vested in
25 those agents by the USDA under the OFPA and the NOP. Except as expressly admitted,
26 Safeway denies the remaining allegations in Paragraph 32 and expressly denies that class
27 treatment is appropriate.
28

1
2 33. Plaintiff seeks certification of a state-wide Consumer Class defined as follows:

3 All persons in the State of California who purchased organic milk
4 or milk products from Safeway during the time period of
December 5, 2003 through October 15, 2007.

5 **ANSWER:**

6 Safeway admits that Plaintiff purports to seek certification of a "state-wide
7 Consumer Class." Safeway denies that class certification of any kind is appropriate and
8 expressly denies that any claims in this action are appropriate for class treatment. Safeway
9 further denies the appropriateness of the definition and description of the proposed class. Except
10 as expressly admitted, Safeway denies the remaining allegations in Paragraph 33.

11 34. Plaintiff is informed and believes that the Class consists of many thousands of
12 persons throughout the State of California, making individual joinder of all Class Members
13 impracticable.

14 **ANSWER:**

15 Safeway denies the allegations in Paragraph 34 and expressly denies that class
16 treatment is appropriate.

17 35. Questions of law and fact are common to the Plaintiff Class and predominate over
18 questions affecting only individual member, including, *inter alia*, the following:

- 19 a. Whether the alleged conduct by Defendant violated laws as alleged in this
20 Complaint;
- 21 b. Whether Defendant engaged in unfair, unlawful and/or fraudulent business
22 practices by failing to disclose that the milk labeled as organic milk was not organic;
- 23 c. Whether Defendant violated federal and/or state regulations by failing to
24 disclose that the milk labeled as organic milk was not organic;
- 25 d. Whether Plaintiff and the members of the Class were unconscionably
26 induced into purchasing organic milk without adequate disclosures that the milk was not organic;
- 27 e. Whether Defendant violated California law, including the Unfair
28 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, §§ 17500, *et seq.*, and/or

1 California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*;

2 f. Whether Defendant made misrepresentations to Plaintiff and the members
3 of the Class about milk labeled as organic;

4 g. Whether Plaintiff and the members of the Class are entitled to equitable
5 and/or injunctive relief;

6 h. Whether Defendant's unlawful, unfair and/or deceptive practices harmed
7 Plaintiff and the members of the Class; and

8 i. Whether Defendant was unjustly enriched by its deceptive practices.

9 **ANSWER:**

10 Safeway denies the allegations in Paragraph 35 and expressly denies that class
11 treatment is appropriate.

12 36. Plaintiff's claims are typical of the claims of the Class Members as described
13 above; the claims arise from [sic] the same course of conduct by Safeway and the relief sought is
14 common.

15 **ANSWER:**

16 Safeway denies the allegations in Paragraph 36 and expressly denies that class
17 treatment is appropriate.

18 37. Plaintiff will fairly and adequately represent and protect the interests of all Class
19 Members. Plaintiff is represented by counsel competent and experienced in both consumer
20 protection and class action litigation.

21 **ANSWER:**

22 Safeway is without knowledge or information sufficient to form a belief as to the
23 truth or falsity of the allegations contained in Paragraph 37 regarding Plaintiff and her counsel
24 and, on that basis, denies them. Except as expressly admitted, Safeway denies the remaining
25 allegations in Paragraph 37 and expressly denies that class treatment is appropriate.

26 38. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy, since joinder of all the individual Class members is
28 impracticable. Furthermore, because the damages suffered, and continued to be suffered, by

1 each individual Class member may be relatively small, the expense and burden of individual
 2 litigation would make it very difficult or impossible for individual Class members to redress the
 3 wrongs done to each of them individually and the burden imposed on the judicial system would
 4 be enormous.

5 **ANSWER:**

6 Safeway denies the allegations in Paragraph 38 and expressly denies that class
 7 treatment is appropriate.

8 39. In addition, the prosecution of separate actions by the individual Class members
 9 would create a risk of inconsistent or varying adjudications with respect to individual Class
 10 members, which would establish incompatible standards of conduct for defendants. In contrast,
 11 the conduct of this action as a class action presents far fewer management difficulties, conserves
 12 judicial resources and the parties' resources, and protects the rights of each Class member.

13 **ANSWER:**

14 Safeway denies the allegations in Paragraph 39 and expressly denies that class
 15 treatment is appropriate.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATIONS OF THE CLRA**

18 **(Cal. Civ. Code §§ 1750, *et seq.*)**

19 40. The preceding paragraphs of this Complaint are realleged and incorporated by
 20 reference. Plaintiff asserts this claim for violations of the CLRA on behalf of herself and the
 21 members of the Class.

22 **ANSWER:**

23 Safeway repeats and realleges its answers to the preceding paragraphs as if fully
 24 set forth herein. Safeway admits that Plaintiff purports to assert this claim under California Civil
 25 Code §§ 1750, et seq., on behalf of herself and the members of a proposed class. California Civil
 26 Code §§ 1750, et seq., speaks for itself, and to the extent that the allegations in Paragraph 40
 27 vary therewith, Safeway denies those allegations. Safeway expressly denies that it has
 28 committed any violations of the CLRA. Except as expressly admitted, Safeway denies the

1 remaining allegations in Paragraph 40 and expressly denies that class treatment is appropriate.

2 41. Plaintiff and the members of the Class are consumers who purchase goods (food
3 products) from Defendant for personal, family, or household purposes.

4 **ANSWER:**

5 Safeway is without knowledge or information sufficient to form a belief as to the
6 truth or falsity of the allegations contained in Paragraph 41 and, on that basis, denies them.

7 Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 41 and
8 expressly denies that class treatment is appropriate.

9 42. Representing that goods (including food products) have approval, characteristics,
10 uses, or benefits which they do not have and advertising goods with intent not to sell them as
11 advertised constitute unfair or deceptive trade practices under the provisions of the CLRA, Cal.
12 Civ. Code §§ 1770(a)(5), (9), (14) and (17).

13 **ANSWER:**

14 California Civil Code §§ 1770(a)(5), (9), (14) and (17) speak for themselves, and
15 to the extent that the allegations in Paragraph 42 vary therewith, Safeway denies those
16 allegations. Except as expressly admitted, Safeway denies the remaining allegations in
17 Paragraph 42.

18 43. Plaintiff and the members of the Class have all been directly and proximately
19 injured by Defendant's conduct, and such injury includes the purchase of milk labeled as
20 organic, but which was not organic, that they would not have purchased were they truthfully and
21 fully informed of material facts concerning the fact that the milk was not organic.

22 **ANSWER:**

23 Safeway denies that Plaintiff or anyone else has been injured by "the purchase of
24 milk labeled as organic" from Safeway and further denies that it has sold milk "labeled as
25 organic, but which was not organic." Safeway is without knowledge or information sufficient to
26 form a belief as to the truth or falsity of the allegations concerning the purchasing decisions of
27 Plaintiff or anyone else contained in the second sentence of Paragraph 43 and, on that basis,
28

denies them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 43 and expressly denies that class treatment is appropriate.

44. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff seeks an order enjoining Defendant from engaging in the methods, acts, or practices alleged herein. Pursuant to Cal. Civ. Code § 1782, if Defendant does not rectify its illegal acts within 30 days, Plaintiff intends to amend this complaint to add claims for: a) actual damages; b) restitution of money to Plaintiff and class members; c) punitive damages; d) attorneys' fees and costs; and e) other relief that this Court deems proper.

ANSWER:

Safeway admits that Plaintiff purports to seek, among other relief, an order enjoining Safeway. Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. Safeway further denies that Plaintiff has complied with California Civil Code § 1782. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 44 and expressly denies that class treatment is appropriate.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING

(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)

45. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of Cal. Bus. & Prof. Code §§ 17500, *et seq.* on behalf of himself [sic] and the members of the Class.

ANSWER:

Safeway repeats and realleges its answers to the preceding paragraphs as if fully set forth herein. Safeway admits that Plaintiff purports to assert this claim under California Business and Professions Code §§ 17500, *et seq.*, on behalf of herself and the members of a proposed class. California Business and Professions Code §§ 17500, *et seq.*, speaks for itself, and to the extent that the allegations in Paragraph 45 vary therewith, Safeway denies those allegations. Safeway expressly denies that it has committed any violations of the California

1 Business and Professions Code. Except as expressly admitted, Safeway denies the remaining
2 allegations in Paragraph 45 and expressly denies that class treatment is appropriate.

3 46. In violation of Section 17500, in connection with its sales of non-organic milk,
4 Defendant made or disseminated statements which are untrue or misleading, and which
5 Defendant knew (or by the exercise of reasonable care should have known) to be untrue or
6 misleading.

7 **ANSWER:**

8 California Business and Professions Code §§ 17500, et seq. speaks for itself, and
9 to the extent that the allegations in Paragraph 46 vary therewith, Safeway denies those
10 allegations. Safeway denies making any “untrue or misleading” statements in California or
11 anywhere else. By way of further response, Safeway affirmatively states that it sells its organic
12 milk with the label “USDA Organic” because it purchases its organic milk from dairies whose
13 products and operations are certified “USDA Organic” by one or more USDA-accredited
14 certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA
15 and the NOP. Except as expressly admitted, Safeway denies the remaining allegations in
16 Paragraph 46.

17 47. As a result of the violations of California law alleged herein, Defendant has been,
18 and will be, unjustly enriched at the expense of Plaintiff, the members of the Class and the
19 general public. Specifically, Defendant has been unjustly enriched by their receipt of monies
20 from consumers who purchased milk labeled organic that was not organic which is advertised
21 and/or otherwise marketed in this State, and is promoted and sold by Defendant through
22 advertising and marketing materials containing the false and misleading statements alleged
23 herein.

24 **ANSWER:**

25 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,
26 including, but not limited to, the relief requested in Plaintiff’s Complaint. Except as expressly
27 admitted, Safeway denies the remaining allegations in Paragraph 47 and expressly denies that
28 class treatment is appropriate.

48. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair competition, and for such other relief as set forth below.

ANSWER:

Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 48 and expressly denies that class treatment is appropriate.

THIRD CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

49. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for negligent misrepresentation on behalf of himself [sic] and the members of the Class.

ANSWER:

Safeway repeats and realleges its answers to the preceding paragraphs as if fully set forth herein. Safeway admits that Plaintiff purports to assert this claim for negligent misrepresentation on behalf of herself and members of a proposed class. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 49 and expressly denies that class treatment is appropriate.

50. Defendant owed a duty to Plaintiff and members of the Class to exercise reasonable care [sic] in making representations about organic milk.

ANSWER:

The allegations in Paragraph 50 are legal conclusions for which no answer is required. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 50 and expressly denies that class treatment is appropriate.

51. These representations were negligently and recklessly made to potential customers and the general public through uniform misbranding, concealment and non-disclosure,

1 through mass media and point-of-sale advertising, and through other information prepared or
 2 disseminated by Defendant. As a direct and proximate result of these misrepresentations,
 3 omissions and concealment, Plaintiff and the Class members have been damaged in and amount
 4 to be proven at trial.

5 **ANSWER:**

6 Safeway denies making any “negligent[] and reckless[]” statements to anyone in
 7 California or anywhere else. Safeway further denies that the Plaintiff, or anyone else, is entitled
 8 to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff’s
 9 Complaint. By way of further response, Safeway affirmatively states that it sells its organic milk
 10 with the label “USDA Organic” because it purchases its organic milk from dairies whose
 11 products and operations are certified “USDA Organic” by one or more USDA-accredited
 12 certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA
 13 and the NOP. Except as expressly admitted, Safeway denies the remaining allegations in
 14 Paragraph 51 and expressly denies that class treatment is appropriate.

15 52. Defendant at all times knew that Plaintiff and the Class members relied (or should
 16 be presumed to have relied) upon the labeling and lack of labeling provided by Defendant, and
 17 the materiality of such labeling is established as a matter of state and federal Law [sic].
 18 Defendant’s concealment, misbranding and non-disclosure were intended to influence
 19 consumers’ purchasing decisions and were done with reckless disregard for the rights of
 20 consumers. Plaintiff’s and Class members’ reliance was reasonably foreseeable by Defendant.

21 **ANSWER:**

22 Safeway denies that it engaged in any “concealment, misbranding and non-
 23 disclosure” whatsoever of its organic milk. The allegations in Paragraph 52 regarding “the
 24 materiality” of Safeway’s labeling are legal conclusions for which no answer is required.
 25 Safeway is without knowledge or information sufficient to form a belief as to the truth or falsity
 26 of the allegations contained in Paragraph 52 regarding upon what Plaintiff or others “relied” and,
 27 on that basis, denies them. Except as expressly admitted, Safeway denies the remaining
 28 allegations in Paragraph 52 and expressly denies that class treatment is appropriate.

FOURTH CAUSE OF ACTION

COMMON LAW UNJUST ENRICHMENT

53. This Cause of Action is pled in the alternative to all contract-based claims and/or causes of action at law.

ANSWER:

Safeway admits that Plaintiff purports to plead her claim for unjust enrichment in the alternative. Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 53.

54. Defendant has received a benefit from Plaintiff and the Class Members in the form of the prices Plaintiff and the Class Members paid for Defendant's "organic" milk or milk products during the relevant time period.

ANSWER:

Safeway denies the allegations in Paragraph 54 and expressly denies that class treatment is appropriate.

55. Defendant is aware of its receipt of the above-described benefit.

ANSWER:

Safeway denies the allegations in Paragraph 55.

56. Defendant received the above-described benefit to the detriment of Plaintiff and each of the other members of the Class.

ANSWER:

Safeway denies the allegations in Paragraph 56 and expressly denies that class treatment is appropriate.

57. Defendant continues to retain the above-described benefit to the detriment of Plaintiff and the Class Members.

1 **ANSWER:**

2 Safeway denies the allegations in Paragraph 57 and expressly denies that class
3 treatment is appropriate.

4 58. Under the circumstances, it would be inequitable for Defendant to retain the
5 above described benefit.

6 **ANSWER:**

7 Safeway denies the allegations in Paragraph 58 and expressly denies that class
8 treatment is appropriate.

9 59. As a result of Defendant's unjust enrichment, Plaintiff and the Class Members
10 have sustained damages in an amount to be determined at trial and seek full disgorgement and
11 restitution of Defendant's enrichment, benefits, and ill-gotten gains acquired as a result of the
12 unlawful or wrongful conduct alleged above.

13 **ANSWER:**

14 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,
15 including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly
16 admitted, Safeway denies the remaining allegations in Paragraph 59 and expressly denies that
17 class treatment is appropriate.

18 **FIFTH CAUSE OF ACTION**
19 **BREACH OF EXPRESS WARRANTY**

20 60. Plaintiff hereby incorporates the preceding paragraphs by reference.

21 **ANSWER:**

22 Safeway repeats and realleges its answers to the preceding paragraphs as if fully
23 set forth herein.

24 61. Aurora sold its "organic" milk or milk products to retailers who sold that milk or
25 milk products to Plaintiff and the Class Members.

26 **ANSWER:**

27 Safeway does not answer for Aurora, which has not been named in this action.

28 Safeway admits that some, but not all, of the organic milk that it sells is supplied by Aurora.

1 Safeway further admits that it sells its organic milk with the “USDA Organic” seal, because it
2 purchases its organic milk from dairies whose products and operations are certified “USDA
3 Organic” by one or more USDA-accredited certifying agents, pursuant to the authority vested in
4 those agents by the USDA under the OFPA and the NOP. Safeway is without knowledge or
5 information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 61
6 regarding Plaintiff, the proposed class members and Aurora’s customers and, on that basis,
7 denies them. Except as expressly admitted, Safeway denies the remaining allegations in
8 Paragraph 61 and expressly denies that class treatment is appropriate.

9 62. At all times relevant to this action, Defendant falsely represented that its milk or
10 milk products were “organic” when they were not produced in compliance with the applicable
11 organic certification requirements, laws, standards and regulations.

12 **ANSWER:**

13 Safeway denies the allegations in Paragraph 62.

14 63. By its statements and representations about the “organic” status of its milk or milk
15 products, Defendant warranted the production process and condition of that “organic” milk or
16 milk products purchased by Plaintiff and the Class Members.

17 **ANSWER:**

18 Safeway denies the allegations in Paragraph 63 and expressly denies that class
19 treatment is appropriate.

20 64. Defendant made these representations and warranty statements to induce Plaintiff
21 and the Class Members to purchase Defendant’s “organic” milk or milk products or was a
22 material factor in the decision of Plaintiff and the Class Members to purchase the milk or the
23 milk products.

24 **ANSWER:**

25 Safeway denies the allegations in Paragraph 64 and expressly denies that class
26 treatment is appropriate.

27 65. Due to its conduct alleged herein, Defendant’s “organic” milk or milk products
28 failed to conform to each of these warranties.

1 **ANSWER:**

2 Safeway denies the allegations in Paragraph 65.

3 66. As a result of Defendant's conduct, Plaintiff and the Class Members have been
4 damaged.

5 **ANSWER:**

6 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,
7 including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly
8 admitted, Safeway denies the remaining allegations in Paragraph 66 and expressly denies that
9 class treatment is appropriate.

10 67. Within a reasonable time after Plaintiff and the Class Members knew or should
11 have known of the failure to conform, Plaintiff, individually and on behalf of the Class, placed
12 Defendant on notice thereof.

13 **ANSWER:**

14 Safeway denies the allegations in Paragraph 67 and expressly denies that class
15 treatment is appropriate.

16 **SIXTH CAUSE OF ACTION**

17 **(California's Business & Professions Code §§ 17200, *et seq.*)**

18 68. The preceding paragraphs of this Complaint are realleged and incorporated by
19 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code
20 §§ 17200, *et seq.*, on behalf of himself [sic] and the members of the Class.

21 **ANSWER:**

22 Safeway repeats and realleges its answers to the preceding paragraphs as if fully
23 set forth herein. Safeway admits that Plaintiff purports to assert this claim under California's
24 Business and Professions Code §§ 17200, *et seq.*, on behalf of herself and the members of a
25 proposed class. California's Business and Professions Code §§ 17200, *et seq.*, speaks for itself,
26 and to the extent that the allegations in Paragraph 68 vary therewith, Safeway denies those
27 allegations. Safeway expressly denies that it has committed any violations of the California
28

1 Business and Professions Code. Except as expressly admitted, Safeway denies the remaining
2 allegations in Paragraph 68 and expressly denies that class treatment is appropriate.

3 69. Defendant's statements and representations constitute unfair, unlawful and
4 deceptive trade practices that have the capacity to and do deceive consumers, in violation of the
5 UCL.

6 **ANSWER:**

7 The UCL speaks for itself, and to the extent that the allegations in Paragraph 69
8 vary therewith, Safeway denies those allegations. Safeway expressly denies engaging in any
9 "unfair, unlawful and deceptive trade practices" of any kind or deceiving consumers in
10 California or anywhere else. Except as expressly admitted, Safeway denies the allegations in
11 Paragraph 69.

12 70. All of the wrongful conduct alleged herein occurs and continues to occur in the
13 conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or
14 generalized course of conduct that is repeated in the State of California on hundreds, if not
15 thousands, of occasions daily.

16 **ANSWER:**

17 Safeway denies the allegations in Paragraph 70 and expressly denies committing
18 any "wrongful conduct" in the State of California or anywhere else.

19 71. Plaintiff has suffered injury in fact and has lost money or property as a result of
20 Defendant's unfair, unlawful and/or deceptive practices by paying a higher price for milk labeled
21 as organic that was not organic.

22 **ANSWER:**

23 Safeway denies the allegations in Paragraph 71 and expressly denies that class
24 treatment is appropriate.

25 72. Plaintiff requests that this Court enter such orders or judgments as may be
26 necessary to enjoin the Defendant from continuing its unfair, unlawful, and/or deceptive
27 practices, to restore to any person in interest any money which may have been acquired by
28 means of such unfair competition and to disgorge any profits realized by Defendant as a result of

its unfair, unlawful and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

ANSWER:

Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. California Business and Professions Code § 17203 and California Civil Code § 3345 speak for themselves, and to the extent that the allegations in Paragraph 72 vary therewith, Safeway denies those allegations. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 72.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against Defendant and in favor of Plaintiff, and grant the following relief:

A. Determine that this action may be maintained as a Class action with respect to a state-wide Consumer Class; that the court certify a class action with respect to particular issues if appropriate, and that the Court designate and appoint Plaintiff and her counsel to serve as Class Representative and Class Counsel;

B. Declare, adjudge and decree the conduct of the Defendant as alleged herein to be unlawful, unfair and/or deceptive;

C. Grant Plaintiff and all Class Members awards of actual, compensatory, punitive and/or exemplary damages in such amount to be determined at trial and as provided by applicable law;

D. Restore to Plaintiff and all Class Members all money or property which may have been acquired by means of such unfair competition and disgorgement all profits received by Defendant due to its unlawful, unfair and/or deceptive practices;

E. An injunction ordering Defendant to stop the unlawful, unfair and deceptive conduct alleged herein;

F. Grant Plaintiff and all Class Members awards of statutory damages, attorney's fees and costs;

1 G. Grant Plaintiff and the Class Members their costs of suit, including reasonable
2 attorneys' fees, and expenses as provided by law; and

3 H. Grant Plaintiff and the Class Members such other, further, and different relief as
4 the nature of the case may require or as may be determined to be just, equitable, and proper by
5 this Court.

6 **ANSWER:**

7 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,
8 including, but not limited to, the relief requested in Plaintiff's Complaint. Safeway further
9 denies that class certification is appropriate and expressly denies that any claims in this action
10 are appropriate for class treatment. Except as expressly admitted, Safeway denies the remaining
11 allegations in the Paragraph entitled "Prayer for Relief."

12 **DEMAND FOR TRIAL BY JURY**

13 Plaintiff, by counsel, requests a trial by jury on those causes of actions set forth
14 herein.

15 **ANSWER:**

16 Safeway admits that Plaintiff purports to seek a jury trial for the causes of action
17 in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations
18 in the Paragraph entitled "Demand for Trial by Jury."

19
20 **FIRST AFFIRMATIVE DEFENSE**

21 1. The Complaint fails to state any claim upon which relief can be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 2. The claims of Plaintiff and members of the proposed class for equitable relief are
24 barred by the fact that Plaintiff and the members of the proposed class have an adequate remedy
25 at law.

26 **THIRD AFFIRMATIVE DEFENSE**

27 3. The claims of Plaintiff and members of the proposed class are barred, in whole or
28 in part, to the extent that Plaintiff and/or members of the proposed class suffered no legal injury.

FOURTH AFFIRMATIVE DEFENSE

4. The claims of Plaintiff and/or members of the proposed class may be barred, in whole or in part, by the doctrines of waiver, estoppel and/or laches.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff and members of the proposed class may be barred, in whole or in part, from recovery because they have made statements and/or taken actions that estop them from asserting their claims.

SIXTH AFFIRMATIVE DEFENSE

6. The claims of Plaintiff and/or members of the proposed class may be barred, in whole or in part, by the applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

7. The claims in Plaintiff's Complaint are barred, in whole or in part, because Plaintiff and members of the proposed class cannot meet their burden of showing that any acts, conduct, statements or omissions on the part of Safeway were misleading or likely to mislead.

EIGHTH AFFIRMATIVE DEFENSE

8. The claims in Plaintiff's Complaint are barred, in whole or in part, because Plaintiff and members of the proposed class were not actually misled or deceived by and/or did not rely on any statements or omissions on the part of Safeway in deciding whether to purchase the organic milk sold by Safeway.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff's Complaint is barred, in whole or in part, by the Supremacy Clause of the United States Constitution and by the doctrine of preemption. Allowing state law to override or alter the decisions of the USDA and the requirements of the OFPA and the NOP regulations conflicts with both Federal law and the policies underlying Federal law and would stand as an obstacle to the Federal objective of creating unified organic food standards throughout the United States.

TENTH AFFIRMATIVE DEFENSE

10. The claims in Plaintiff's Complaint are barred, in whole or in part, because the USDA has primary jurisdiction over all or part of the subject matter hereto.

ELEVENTH AFFIRMATIVE DEFENSE

11. If any persons or entities claiming to be members of the proposed class have released claims, they may be barred from recovery, in whole or in part, by such releases.

TWELFTH AFFIRMATIVE DEFENSE

12. The claims of Plaintiff and members of the proposed class may be barred, in whole or in part, to the extent that they may have failed to mitigate damages.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff and/or members of the proposed class may be barred from recovery, in whole or in part, if in this or other tribunals they have brought actions and have received judgments or awards on some or all claims asserted herein.

FOURTEENTH AFFIRMATIVE DEFENSE

14. If any persons claiming to be members of the proposed class have resolved the same or similar claims as those alleged in Plaintiff's Complaint, they may be barred from recovery, in whole or in part, on the ground that they are subject to the defense of accord and satisfaction.

FIFTEENTH AFFIRMATIVE DEFENSE

15. The claims of Plaintiff and/or the members of the proposed class are barred, in whole or in part, to the extent that they engaged in unlawful, inequitable or improper conduct.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The claims of Plaintiff and/or the members of the proposed class are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. The claims of Plaintiff and/or the members of the proposed class are barred, in whole or in part, because Plaintiff and members of the proposed class failed to exhaust administrative remedies.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. The claims of Plaintiff and members of the proposed class are barred, in whole or in part, because Safeway purchased organic milk from dairies that complied with the applicable Federal laws and regulations governing the production, marketing, labeling and sale of organic foods and were certified by a Federal agency to label their products "USDA Organic."

NINETEENTH AFFIRMATIVE DEFENSE

19. The claims in Plaintiff's Complaint are barred, in whole or in part, by the doctrine set forth in Diaz v. Kay-Dix Ranch, 9 Cal. App. 3d 588 (1970).

TWENTIETH AFFIRMATIVE DEFENSE

20. The claims in Plaintiff's Complaint are barred, in whole or in part, by the doctrine set forth in Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163 (1999).

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. The claims of Plaintiff and members of the proposed class for punitive damages are barred, in whole or in part, by California law and the Constitution of the United States.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Plaintiff's action cannot be maintained as a class action because Plaintiff cannot meet the requirements for class certification. Further, certification of the proposed class would result in the denial of due process to Safeway, as well as to the proposed class.

TWENTY-THIRD AFFIRMATIVE DEFENSE

23. This action is not appropriate for class treatment because the claims necessarily turn on individual purchasing habits and patterns for each Plaintiff and proposed class member.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. Plaintiff and her counsel have failed to join as parties to this action all persons and entities that would be necessary parties for adjudication of the claims of Plaintiff and/or members of the proposed class.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims for damages under the Consumer Legal Remedies Act are defective, since no statutorily-required notice was served upon Safeway thirty days prior to the filing of suit as required by Cal. Civ. Code § 1782(a).

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. The claims in Plaintiff's Complaint are barred, in whole or in part, because the California Department of Health Services and/or the California Department of Food and Agriculture have primary jurisdiction over all or part of the subject matter hereto.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Safeway has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses that govern the claims asserted by Plaintiff and on behalf of persons claimed to be members of the proposed class. Safeway, therefore, reserves the right to raise additional defenses as appropriate.

WHEREFORE, Safeway prays:

- (a) That Plaintiff and all members of the proposed class take nothing by reason of this suit;
- (b) For attorneys fees and costs;
- (c) That the certification of the proposed class herein be denied; and
- (d) For any other and further relief as the Court deems just and proper.

Dated: February 26, 2008

Respectfully submitted,

/s/

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